



In The
Supreme Court of the United States

_____o_____

_____ Term, 1977

No. _____

_____o_____ **76-1742**

WILLIAM ALBERT HALTERMAN,
Petitioner,

vs.

THE STATE OF IOWA,
Respondent.

_____o_____

**PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF IOWA**

_____o_____

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Petitioner prays that a writ of certiorari issued to review the judgment of the Supreme Court of the State of Iowa, entered in the above-entitled case on April 15, 1971, and the denial of the Petition for Rehearing, entered herein on the 11th day of March, 1977.

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CITATIONS TO OPINIONS BELOW

The opinion of the Supreme Court of the State of Iowa sustains the judgment of the Warren County District Court and is printed in the Appendix.

JURISDICTION

The judgment of the Supreme Court of the State of Iowa was entered on January 19th, 1977, and the Supreme Court of Iowa denied petitioner's Petition for Rehearing on the 11th day of March, 1977. The jurisdiction of this Court is invoked under 28 U. S. C. 1257.

QUESTION PRESENTED

Whether or not the petitioner was denied his right to a fair and impartial trial under the Sixth and Fourteenth Amendments to the Constitution of the United States by the District Court's failure to grant a change of venue.

STATEMENT OF THE CASE

The defendant, William Albert Halterman, was indicted for the crime of burglary with aggravation on January 8th, 1975. On April 9th, 1975, petitioner filed a motion for change of venue and on May 15th, 1975, the trial court overruled petitioner's motion for change of venue. On September 25th, 1975, petitioner was found guilty of the crime of burglary with aggravation and on October

20th, 1975, petitioner filed a motion for a new trial alleging that the petitioner had not received a fair and impartial trial under the provisions of the Constitution, said motion being denied.

The petitioner was sentenced to ten years imprisonment.

On January 19th, 1977, the Supreme Court of the State of Iowa affirmed the District Court.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted because the Supreme Court of the State of Iowa in affirming the District Court judgment has rendered a decision which violates the constitutional rights of the petitioner under the Sixth and Fourteenth Amendments of the Constitution of the United States.

CONCLUSION

For the reasons stated above, certiorari should be granted.

Respectfully submitted,

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APPENDIX

IN THE SUPREME COURT OF IOWA

(Filed January 19, 1977)

335

58891

STATE OF IOWA,

Appellee,

vs.

WILLIAM ALBERT HALTERMAN,

Appellant.

Appeal from Warren District Court—Robert O. Frederick and Van Wifvat, Judges.

Defendant appeals from judgment entered on a jury verdict finding him guilty of burglary with aggravation.—Affirmed.

Martin R. Dunn, of Lawyer, Lawyer, Dunn & Jackson, of Des Moines, for appellant.

Richard C. Turner, Attorney General, John Criswell, County Attorney, for appellee.

Submitted to Moore, C. J., Rawlings, LeGrand, Reynolds, and Harris, JJ.

PER CURIAM:

Defendant, William Albert Halterman, appeals from judgment on a jury verdict finding him guilty of burglary

with aggravation (§§ 708.1-708.2, the 1973 Code). We affirm.

January 8, 1975, Halterman was charged with the above stated offense. He thereupon entered a not guilty plea.

April 9, 1975, defendant petitioned for a change of venue, Code ch. 778, to which the State filed resistance. During the May 5, 1975, hearing thereon he introduced 20 like affidavits which stated, in part:

“That I have read or heard of the alleged facts contained in the newspaper articles attached hereto and marked Exhibit A and that further, I am aware that * * * Bill Halterman * * * and others named in Exhibit A have been charged by the Warren County Grand Jury with the crime of burglary with aggravation.

“That I have discussed with other people this case and have heard from others that there are allegations and rumors throughout Warren County to the effect that the above-named individuals, without cause or justification, went to the mobile home of Mr. & Mrs. James Tyler on or about the 1st day of January, 1975, armed with weapons variously described as clubs, crow bars, etc.; broke into the mobile home; and beat and assaulted all of the occupants of said mobile home, including women and children.

“That it has further come to my attention that the occupants of said mobile home have spread the allegations and rumors and have expressed opinions that all of the Defendants are guilty.”

Attached to these affidavits were copies of two newspaper articles concerning the involved incident. Although identity of these publications is not given, they were clearly confined to news media reporting which ordinarily accom-

panies an event such as this. See *State v. Albers*, 174 N. W. 2d 649, 652 (Iowa 1970).

May 15, 1975, trial court overruled defendant's change of venue petition.

October 20, 1975, a new trial motion, based on similar grounds, was also denied.

The basic and controlling contention here made in support of a reversal is that trial court erred in overruling defendant's change of venue petition and his same basis motion for a new trial.

The law in this area, well stated in the factually comparable case of *State v. Dague*, 206 N. W. 2d 93, 94-95 (Iowa 1973), need not be here repeated.

Defendant asserts, however, "rumors are by nature somewhat indefinite and can rarely be shown by specific facts of communication". We recognized in *Dague* that factual recitals will be limited where grounds for the motion are not readily susceptible to a detailed statement of facts. 206 N. W. 2d at 95. But here any factual recitals attempted are based on information and belief, lacking requisite discernible particularity.

Although a change of venue might well have been granted in this case, our independent evaluation of the record persuades us that trial court's rulings, in each involved instance, were within the range of permissible discretion.

AFFIRMED.